

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 31, 38-41, 55, 61, 65-68 and 115.

The following claims are *independent*: 31, 55 and 115.

The following claims have previously been cancelled without prejudice or disclaimer: 1-30, 32-37, 42-54, 56-60 and 69-114.

Please *amend* claims 31, 38-41, 55, 61, 65-68 and 115; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices (hereinafter “amendment,” “amendments,” and/or “amended”), Applicant submits that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that these claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Claim Rejections - 35 U.S.C. § 103

The Office Action has maintained the rejection of claims 31, 38-41, 55, 61, 65-68 and 115 under 35 U.S.C. § 103(a) as allegedly being unpatentable over McCall et al., US Patent No. 6,321,984 (hereinafter “McCall”) in view of Infinity Trading Group, from January 9, 1998,

infinitytrading.com (hereinafter "Infinity") and in further view of "Weather futures bet will give Tucson forms a hedge against loss," Arizona Daily Star, Tucson, Arizona, 5 February 1999 (hereinafter "Weather Futures"). Applicant notes that the Examiner has taken Official Notice (hereinafter "Official Notice") with regards to claims 39 and 66.

Applicant respectfully traverses the pending rejections and Official Notices, and maintains that the references of record do not discuss or render obvious at least the following claim elements as recited in previously pending independent claim 31:

A processor-implemented method to provide a customer a program price for an automotive fuel, comprising:
... ascertaining a mode of payment made by a customer said program price based at least in part on the program sponsor.

The Examiner, with regard to the previously pending claim element, concedes that McCall does not disclose "ascertaining a mode of payment by the customer" and alleges:

With respect to ascertaining a mode of payment by the customer, this act reads on determining how the customer will pay for their fuel (credit card, debit card, cash, etc). Although this is not explicitly disclosed in McCall, when one is conducting a purchase transaction, it is very well known to determine how the payment will be made. It would have been obvious to one of ordinary skill in the art to figure out what the manner of payment [is] for a given customer (Office Action, pg. 11, § 3)

Applicant respectfully traverses the Examiner's assertions and submits that "...ascertaining a mode of payment ..." is not performed in vacuum, as suggested by the Examiner with regard to the previously pending claim element (Office Action, pg. 11, § 3) but is in fact "...based at least in part on the program sponsor..." as explicitly recited in previously pending independent claim 31. Although Applicant disagrees with the Examiner's continued

assertion of the relevance of the references of record to the claimed elements, Applicant has amended independent claim 31 to recite:

... ascertaining a program sponsor determined payment mode for providing said program price to said customer; storing said customer-specific, fixed, guaranteed program price and said program sponsor determined payment mode for facilitating a purchase of said vehicle fuel.

Applicant submits that at least the amended claim elements noted above are not obvious and are thus patentable over the references of record. Should the Examiner disagree and reject the amended independent claim 31, Applicant respectfully requests explicit clarification as to how the amended claim elements as recited within the context of the claim are allegedly obvious to one of ordinary skill in the art or in view of the references of record.

Furthermore, Applicant submits that Infinity's heating oil futures contracts and Weather Futures' weather related risk hedging fail to remedy the deficiencies identified above with regard to independent claim 31. For at least the reasons discussed above, Applicant submits at least the noted claim elements as amended are neither obvious nor discussed or rendered obvious by the references of record, taken alone or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claim.

With regard to independent claim 115, the Examiner alleges that "the claimed language of 'on establishment of an affinity relationship between the program sponsor and the customer', this is taken as being directed to non-functional descriptive material." (Office Action, pg. 4, § 3). Applicant respectfully traverses the Examiner's assertion and submits that the noted claim element is clearly directed to operative descriptive language in accordance

with MPEP 2106.01 and should therefore be accorded patentable weight. However, to provide further clarification, Applicant has amended independent claim 115 to recite:

... establishing an affinity relationship between a program sponsor and the customer;
receiving program sponsor data, wherein said program sponsor data includes an amount of a finder's fee paid by the program sponsor to a program operator in response to the establishing of the affinity relationship between the program sponsor and the customer

Accordingly, Applicant submits that at least the amended claim elements of independent claim 115 are directed to functional descriptive material and requests their substantive examination.

Independent Claim 55

Although of different scope than independent claim 31, Applicant submits independent claim 55 is also patentably distinct over the references of record, taken alone or in combination. For example, independent claim 55 recites, *inter alia*:

A processor-enabled method for providing a program price for the purchase of a vehicle fuel, comprising:
... ascertaining a program sponsor determined payment mode for providing said program price to said customer;
storing said customer-specific, fixed, guaranteed program price and said program sponsor determined payment mode for facilitating a purchase of said vehicle fuel.

Applicant submits at least the noted claim elements are not discussed or rendered obvious by the applied references for at least the reasons discussed above with regard to independent claim 31. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claim.

Independent Claim 115

Although of different scope than independent claims 1 and 55, Applicant submits independent claim 115 is also patentably distinct over the applied references, taken alone or in combination. For example, independent claim 115 recites, *inter alia*:

A processor-enabled method for providing a program price for the purchase of a vehicle fuel, comprising:
... ascertaining a program sponsor determined payment mode for providing said program price to said customer;
storing said customer-specific, fixed, guaranteed program price and said program sponsor determined payment mode for facilitating a purchase of said vehicle fuel.

Applicant submits at least the noted claim elements are not discussed or rendered obvious by the applied references for at least the reasons discussed above with regard to independent claims 31 and 55. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claim.

Official Notice

The Examiner has rejected claims 39 and 66 in view of Official Notice. Applicant respectfully traverses the rejections and submits that the claimed "hedging strategy includes purchasing a futures contract on said vehicle fuel" as recited in claims 39 and 66 would not have been well known in relation to the other elements of the claims and within the context of the claims as a whole to one of ordinary skill in the art at the time the invention was made. However to provide further clarification, Applicant has amended claims 39 and 66 to recite "hedging strategy includes monitoring current market conditions and futures contracts pricing conditions for purchasing futures contracts on said vehicle fuel." Applicant submits

that at least the amended claims are patentable. Accordingly, Applicant submits that the Examiner's Official Notices with respect to claims 39 and 66 have been addressed and respectfully requests reconsideration and withdrawal of the Official Notices and allowance of the claims.

Dependent Claims

Furthermore, Applicant submits claims 38-41 and 61-68 which depend, directly or indirectly, from independent claims 31 and 55 respectively are all patentable over the references of record, taken alone or in combination, for at least similar reasons as discussed above with regard to independent claims 31 and 55. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claims.

CONCLUSION

Applicant asserts that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art to this Office Action (and/or any previous office action(s)) (hereinafter "Office Action(s)"). While many other claim elements and/or bases for rejection were not discussed, as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art, and Applicant reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to the Office Action(s)'

objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection(s) and/or rejection(s) as to any other claim element(s), any such re-assertion(s) of remarks are not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion(s) of remarks. Consequently, the reference(s) cited the Office Action(s) do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any assertions, (mis)characterizations (e.g., of claims, references, and/or otherwise), and/or Official Notice(s) in the Office Action(s). As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 31, 38-41, 55, 61, 65-68 and 115, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-075. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-075.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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